

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CSX TRANSPORTATION, INC.
500 Water Street
Jacksonville, Florida 32202-4423

Plaintiff,

v.

NEW YORK DAILY NEWS
125 Theodore Conrad Drive
Jersey City, New Jersey 07305

Defendant.

CIVIL ACTION

NO.

COMPLAINT

PARTIES

1. Plaintiff CSX Transportation Inc., (“CSX”), is a corporation organized and existing pursuant to the laws of Virginia and has its principal place of business in Jacksonville, Florida. CSX operates as an interstate rail carrier subject to the jurisdiction of the U.S. Surface Transportation Board, and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

2. Defendant New York Daily News, (“NYDN”), is a corporation organized and existing pursuant to the laws of New York and has a principal place of business in New York, New York.

JURISDICTION

3. Jurisdiction in this matter is based upon 28 U.S.C. § 1331 because this cause of action arises under the laws of the United States, *i.e.*, the Interstate Commerce Act, 49 U.S.C. §§ 10101, *et seq.*

4. The subject matter of this action stems from railcar demurrage charges arising from the delivery of rail cars pursuant to applicable agreements, tariffs, and rates governing the failure to timely return rail cars into service.

VENUE

5. Venue is proper in this judicial district under 28 U.S.C. § 1391 (a), (b), and (c) because Defendant is subject to personal jurisdiction in this district, it maintains a place of business within the district, and a substantial part of the events constituting this lawsuit occurred at a facility located in Jersey City, New Jersey.

CAUSE OF ACTION

Failure to Pay Rail Demurrage Charges

6. CSX incorporates the preceding paragraphs as if set forth fully at length herein.

7. The subject matter of this action stems from railcar demurrage charges which accrued and were assessed pursuant to the provisions of 49 U.S.C. § 10746, and rules promulgated thereunder relating to freight car usage and distribution.

8. From March through August of 2008, NYDN incurred rail car demurrage charges owed to CSX for the use and detention of rail cars relating to shipments that originated at the Jersey City, New Jersey facility mentioned above.

9. CSX submitted invoices and/or bills to NYDN as to these demurrage charges.

10. The assessed demurrage charges were determined and made applicable to NYDN pursuant to tariffs, rules and rates established in accordance with 49 U.S.C. § 10746.

11. The total amount of accrued demurrage charges which are due and owing from NYDN is \$181,170.00.

12. Demand was made for payment of these charges.


13. NYDN has failed and/or refused to pay CSX the demurrage charges which accrued under the tariff.

WHEREFORE, plaintiff CSX Transportation, Inc. respectfully demands that judgment be entered in its favor and against defendant New York Daily News in the amount of \$181,170.00, as well as any additional demurrage charges which accrue up until the time of trial, together with costs, prejudgment interest, attorneys' fees, and such other relief as the Court may allow.

Respectfully submitted,

KEENAN COHEN & HOWARD P.C.

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